

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

GILBERT LESTER. SPURLOCK,

Plaintiff,

v.

CIVIL ACTION NO. 3:07-0750

CAROL A. CASTO, et. al.,

Defendants.

**ORDER**

This action was referred to the Honorable Maurice G. Taylor, Jr., United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings and recommended that this action be dismissed. The Plaintiff has filed an objection to the Magistrate Judge's Findings and Recommendation. The Court has reviewed the pleadings de novo.

In the Findings and Recommendation, the Magistrate Judge found that Plaintiff did not respond to the motion to dismiss filed by Defendants on November 21, 2007. By Order entered on August 4, 2008, the Magistrate Judge informed Plaintiff that he had a right to respond to the motion and gave him fourteen days to file his response. By letter dated August 12, 2008, Plaintiff informed the Court that he had not received a second motion to dismiss the case. However, there is no second motion to dismiss, and Plaintiff was advised of this fact by the Clerk of this Court by letter dated August 13, 2008. Attached to that letter were copies of the motion, accompanying memorandum, and the docket sheet. As the Magistrate Judge believed that Plaintiff had not

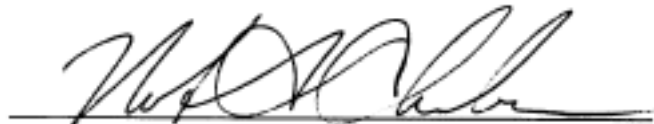
responded to the motion, he recommended that Defendants' motion to dismiss be granted and that this action be dismissed. In a footnote, the Magistrate Judge added that "[b]eyond the failure to respond, it is also apparent, for the reasons set forth in the Findings and Recommendation submitted in Civil Action No. 3:07-cv-0643, that this Court lacks jurisdiction to adjudicate plaintiff's claims." *Findings and Recommendation*, at 2 n.2.

In his objection, Plaintiff asserts that he "filed a response back on 11-27-2007 and was never ruled on. Everything within letter should still stand." *Motion Objecting Judge Decision Honorable Judge Taylor*. Although the Court agrees with Plaintiff that the document he filed in *this* civil action on November 27, 2007, is a response to the motion, the Court finds that his argument in his response is without merit. In general, Plaintiff asserts in a one-paragraph response that the case should not be dismissed because he should be afforded a military attorney to represent him and that his case is based upon discrimination. Upon review, however, the Court agrees with the Magistrate Judge that this Court lacks jurisdiction to adjudicate his claims for the same reasons stated in the Findings and Recommendation and the Order Adopting the Findings and Recommendation filed in Civil Action No. 3:07-0643.

Accordingly, having reviewed all the pleadings in this matter, the Court **REJECTS** the proposed finding that Plaintiff did not respond to the motion to dismiss, but **ADOPTS** the Findings and Recommendation with respect to this Court's lack of jurisdiction over the matter. Therefore, the Court **GRANTS, in part, and DENIES, in part**, Plaintiff's objections, and **DISMISSES** this action from the docket of the Court.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: September 16, 2008

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE